Consumer Federation of America

March 15, 2005

The Honorable James F. Sensenbrenner, Jr.
Chair, House Judiciary Committee
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member, House Judiciary Committee
Washington, D.C. 20515

RE: ONE-SIDED BANKRUPTCY BILL WILL ERECT HARSH NEW BARRIERS AND REWARD ABUSIVE LENDERS

Dear Chairman Sensenbrenner and Ranking Member Conyers:

As the House Judiciary Committee begins to mark up bankruptcy legislation (H.R. 685), the Consumer Federation of America strongly urges you to take a fresh look at this unbalanced legislation and to reject it. This lengthy and complex bill is far from the limited proposal to eliminate bankruptcy abuse that its sponsors claim it is. It would place many far-reaching restrictions on Americans who attempt to declare chapter 7 or chapter 13 bankruptcy because of legitimate financial misfortune.

The bill does not, however, place a single constraint on abusive lending by creditors. A large body of evidence links the rise in consumer bankruptcies in the last twenty years directly to an increase in consumer debt. Revolving debt, most of which is credit card debt, increased nearly fifteen-fold from January 1980 through 2004, from $54 billion to $791 billion. The higher the level of consumer debt, the more likely a family is to declare bankruptcy when misfortune strikes, such as the loss of a job, a serious illness or divorce.

Much of this lending boom was fueled by the extension of credit to vulnerable consumers, including young people, lower income Americans and minorities, and the elderly. Some lenders, such as those offering "predatory" mortgage loans, targeted these borrowers with deceptive offers that had abusive terms. As a result, all of the leading indicators of consumer financial stress increased to record or near-record levels in recent years: home foreclosures, credit card delinquencies and defaults and, of course, bankruptcies.

Rising bankruptcies are driven by economic difficulties. The timing of this bill couldn't be worse. The vast majority of bankruptcies are triggered by the loss of a job, high medical bills or divorce. The recession, the terrorist attacks and ongoing corporate scandals have taken their toll on many families. Long-term unemployment continues to be a significant problem in many areas of the country and the number of Americans without health insurance is at its highest level ever. A report issued earlier this month by a team of Harvard researchers found that about half of all people who file for bankruptcy protection do so because of high medical bills. Sadly, the vast majority of these individuals have some form of health insurance.

This unbalanced bill would have a particularly destructive effect on working Americans who most need the bankruptcy safety net when misfortune strikes: women, who represent the single largest group in bankruptcy; African American and Latino homeowners, who are 500 percent more likely than white homeowners to find themselves in bankruptcy; laid-off workers, and older Americans, who are now the fastest growing age group in bankruptcy. There are several specific problems with the bill:

- **Imposes a rigid means test**. The bill sets up an inflexible formula to determine if an individual debtor is eligible to wipe away most of his or her debts in Chapter 7 bankruptcy. A debtor whose Chapter 7 case is challenged due to these assumptions will have to litigate the issue, an expense many debtors cannot afford. A bankruptcy judge would not be allowed to waive the means test even if the debtor is seeking bankruptcy relief because of some terrible circumstance beyond his or her control, like a medical emergency.

- **Endangers child support.** Despite extravagant claims to the contrary, the bill still threatens the welfare of children. If the parent who owes child support is the debtor, the bill will divert more money to other creditors (such as auto lenders and credit card companies) and allow more non-child support debts to survive bankruptcy. After the bankruptcy is over, the custodial parent will have to fight with creditors for the debtor's limited income.

- **Allows millionaires to continue to shelter their assets in mansions.** The bill will still allow rich debtors (those who have not been found to have committed certain types of wrongdoing, or those who have owned their home in the state longer than 40 months) in five states to declare bankruptcy and keep homes of unlimited value.

- **Expands opportunities for creditor motions.** Creditors will be able to threaten debtors with new costly litigation and make it more likely that debtors who cannot afford to defend themselves in court will be coerced into giving up their legal rights.

- **Makes Chapter 13 plans to save homes and cars far more difficult.** Contrary to the supposed aim of encouraging more Chapter 13 payment plans, numerous provisions in the bill will make Chapter 13 much harder and less attractive. For many debtors, the bill will require five-year plans (up from three years), assuring that the failure rate will be even higher than the current two-thirds who can't complete plans because of unexpected income or job loss.

- **Increases the likelihood that debtors will be evicted--even those who have caught up on back-rent.** Residential landlords could more easily evict a tenant who is in bankruptcy.

- **Does nothing to curb reckless lending by credit card companies and other creditors. Reckless and predatory lending would go unchecked and could increase.** As stated above, abusive lending by creditors often contributes to bankruptcy. Moreover, by making it harder for debt-choked consumers to wipe away some debts when calamity hits, the bill would reduce the financial risk for lenders and encourage them to lower their credit standards even more and to solicit riskier consumers.

For the sake of the vulnerable Americans who would be harmed, we urge you to reject the punitive bankruptcy restrictions in this bill. The Consumer Federation of America does not oppose legislation targeted at bankruptcy abuse, but this bill would harm families who are responsibly using the bankruptcy system.

Sincerely,

Travis B. Plunkett

Travis B. Plunkett
Legislative Director

cc: Members of the Judiciary Committee